IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 113/1998 & CO No.246/1998

Decided on: October 16, 2006

H.R.T.C. **…..Appellant.**

VERSUS

Kultaran Singh and another **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. Rakesh Jaswal, Advocate.**

For the Respondents : **Mr. Raman Sethi, Advocate, for respondent No.1.**

Mr. Navin Bhardwaj, Advocate, for respondent No.2.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. This appeal has been filed by the HRTC, challenging the award of the Motor Accident Claims Tribunal, whereby a sum of Rs.70,000/-, together with interest, has been awarded by way of compensation to respondent Kultaran Singh, who filed a petition, under Section 166 of the Motor Vehicles Act, claiming compensation for the injuries, which he allegedly sustained in an accident involving a Gipsy, belonging to the appellant-HRTC. It was alleged by the respondent that he was travelling by a van, when the Gipsy of the appellant appeared from the opposite direction, being driven in a rash or negligent manner, rammed into the van and the accident,

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Whether the reporters of the local papers may be allowed to see the Judgment?

according to him, resulted in multiples fractures of right leg and left arm, leading to 88% permanent disability of the right leg and 12% permanent disability of the left arm and the permanent disability in relation to the entire body to the extent of 35%.

3. Appellant-HRTC contested the claim of the respondent. It was denied that the accident had taken place due to rash or negligent driving of the Gipsy. It was also denied that the injuries sustained by the respondent in the accident had resulted in permanent disability.

4. The Motor Accident Claims Tribunal, after recording the evidence of both the sides, returned the finding that the cause of the accident was rash or negligent driving of the Gipsy by its driver and that the respondent was entitled to a compensation of Rs.70,000/-. Accordingly, an award for the aforesaid amount was passed in favour of the respondent and it was ordered that the compensation money be paid with interest @ 12% per annum from the date of the petition, i.e. 23.11.1993, to the date of the deposit of the compensation money with the Tribunal.

5. Appellant-HRTC is aggrieved by the aforesaid finding and the award. Its contention is that the accident had taken place because of the rash or negligent driving of the Van by which the respondent (petitioner) was travelling and not on account of rash or negligent driving of the Gipsy. Compensation awarded by the Tribunal is also alleged to be on the higher side.

6. Cross-objections have been filed by respondent Kultaran Singh. He is aggrieved by the quantum of compensation. According to him, the amount of compensation is grossly on the lower side.

7. I have heard the learned counsel for both the parties and gone through the record.

8. It has been admitted during the course of the hearing of the appeal that one more person, who too was travelling by the Van, had also sustained injuries in this very accident, and that that person had also filed a petition, claiming compensation, alleging that the accident had taken place due to rash or negligent driving of the Gipsy, owned by the appellant. That petition was also allowed by the Motor Accident Claims Tribunal and an appeal filed by the HRTC against that award stands dismissed by this Court and the finding of the Tribunal that the cause of the accident was rash or negligent driving of the Gipsy by its driver has been affirmed. The particulars of the said appeal, according to the learned counsel, are FAO No.35 of 1998, titled HRTC versus Col. R.I. Singh. In view of the fact that the finding of the Tribunal given in another case, arising out of the same accident, that the accident had occurred due to the rash or negligent driving of the Gipsy, belonging to the appellant stands affirmed by this Court and the said finding binds the appellant, the first ground of appeal is rejected.

9. As regards the quantum of compensation, learned counsel for the appellant has stated that the respondent was a pensioner at the time when the accident had taken place and his age

was 64 years and looking to these two facts, the amount of compensation is definitely on the higher side.

10. On the other hand, the learned counsel representing the respondent, who has filed Cross-objections, says that the respondent has still not fully recovered from the impact of the injuries and that in fact even after the passing of the award, the respondent has undergone two surgeries for the unification of the fractures, both at the PGI, and that the injuries have resulted not only in permanent disability but also infection of the bone of right leg and the respondent has been undergoing the trauma of operations, infection of bone and consequently physical pain and mental agony, for the last 13 years, because the accident had taken place in the year 1993 and now we are in 2006 and, therefore, the compensation is not just and reasonable.

11. Admittedly, the respondent was 64 years of age when the accident had taken place. He has retired from government service. There is nothing on record suggesting that he had been following any professional or occupational pursuit after retirement and, therefore, he is not entitled to any compensation on account of loss of earnings, including future earnings. Also, he is not entitled to any compensation on account of expenses on treatment, because he being a pensioner of State government, is entitled to reimbursement of all medical expenses. However, he is entitled to compensation under the following three heads:

1. Compensation on account of loss of enjoyment, comforts and amenities of life;

2. Compensation on account of physical pain and mental agony; and
3. Compensation on account of expenses of attendant during the period he (the respondent) remained admitted in the hospital as also after discharge from the hospital, because this is a case of multiple fracture of a leg, which presumably necessitated the engagement of an attendant atleast during the period the respondent remained admitted to the hospital in connection with surgery and for quite some time even after discharge when his leg supposedly was under plaster/bandaged.

12. Respondent Kultaran Singh was allowed to lead additional evidence, when he applied for the same alleging that even after the passing of the award he had to undergo two operations for the unification of the fractures and also for the removal of infection of the bone. The additional evidence adduced by the respondent proves his contention. The respondent-petitioner has been under treatment for the injuries sustained by him in the accident for the last 13 years. Besides resulting in permanent disability to the extent of 35% in relation to the whole body, the multiple fractures of right leg have caused infection of the bone, which is supposed to be quite painful especially in old age. Taking into account all these factors, it is felt that the respondent (Cross-objector) needs to be awarded at least Rs.1,00,000/- on account of pain and suffering, i.e. physical pain and mental agony, Rs.50,000/- on account of loss of enjoyment, comforts and amenities of life, and Rs.50,000/- on account of expenses of attendant(s). Thus, respondent Kultaran Singh is entitled to a compensation of Rs.2,00,000/- in all.

13. For the foregoing reasons, appeal filed by the HRTC is dismissed. Cross-objections are allowed. Consequently, the quantum of compensation is raised from Rs.70,000/-, as awarded by the Tribunal, to Rs.2,00,000/-. The compensation awarded by the Tribunal, i.e. Rs.70,000/-, is stated to have already been deposited with interest due thereon. Remaining amount of Rs.1,30,000/- is ordered to be deposited within one month, with interest at the rate of 9% per annum, from the date of the petition to the date of the deposit of the said amount with this Court.

(Surjit Singh)
Judge.

October 16, 2006(sd)